HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO: 22027 of 2007

Dated: 12-11-2007

Between:

Kanakala Rambabu and 23 others.

..... PETITIC

AND

The District Collector,
Visakhapatnam District,
Visakhapatnam and 4 others.

.....RESPONI

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 22027 of 2007

O R D E R:

This writ petition is filed for a writ of Mandamus to declare the inaction of respondent No.2 in implementing the memorandum of understanding dated 23-11-2002 entered into between him and the petitioners as illegal, arbitrary, unconstitutional and against the principles of natural justice. The petitioners also sought for a direction to respondent No.2 to implement the said memorandum of understanding.

The only grievance of the petitioners in this writ petition is that the memorandum of understanding, dated 23-11-2002, is not being implemented by respondent No.2. The petitioners earlier filed W.P.No.17124 of 1997 for a writ of Mandamus to set aside the proceedings in R.C.No.15562/80/H3 dated 23-06-1997 after declaring the same as illegal and arbitrary. The said writ petition was allowed on the counsel for the parties reporting to this court about the settlement of dispute through the memorandum of understanding dated 23-11-2002. The order in the said writ petition reads as under:

> " Heard both sides.
> It is represented by the counsel on either side that the parties herein have already settled the dispute and also entered into a memorandum of understanding in the matter relating to Kanakala Dibba, Visakhapatnam. Accordingly, they have filed an affidavit in support thereof along with a copy of the settlement.
> Having regard to the memorandum of understanding and also the issuance of G.O.Rt.No.1087 Municipal Administration Department dated 17-09-2002 the writ petition is allowed in terms of the understanding and the impugned proceedings are set aside. No costs."

The learned counsel for the petitioners submitted that respondent No.2, having entered into memorandum of understanding, has not implemented the same and that therefore the present writ petition is filed for its implementation.

I have considered the submission of the learned counsel and I do not feel persuaded to accept the same.

A perusal of the order of this Court passed in W.P.No.17124 of 1997, which is reproduced herein above, shows that the memorandum of understanding dated 23-11-2002 was placed on record and the writ petition itself was allowed in terms of the same. I am, therefore, of the view that the memorandum of understanding has got incorporated in the order of this Court and failure to implement the said understanding by either of the parties constitutes violation of the order of the Court. Therefore, the appropriate remedy for the petitioners is to seek appropriate action for violation of the memorandum of understanding and a separate writ petition for its implementation cannot be maintained.

The writ petition is, therefore, dismissed giving liberty to the petitioner to avail appropriate remedy for enforcement of the memorandum of understanding dated 23-11-2002. No costs.

C.V.NAGARJUNA REDDY,J

Date: 12-11-2007
KLP